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PUBLIC WORKS

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Dear Colleague,

I urge you to join me in supporting the most powerful weapon in the military's fight against sexual assault: the commander. Many of you have been asked to support an alternative legislative approach to dealing with sexual assault cases that would remove the authority of commanders to decide how an allegation of this awful crime would be best resolved. They advocate turning that role over to military judge advocates instead of the responsible and accountable military commanders. I have done the research, and I invite you to do the same. When you do, I expect you will discover that removing authority from commanders would be a grave mistake. It would do real damage to the military. And most importantly, it would not provide any demonstrated benefit to the victims of crime, those vulnerable victims who each of us want to support.

My research has uncovered a number of misconceptions about sexual assault in the military, some of which are being used to encourage taking this responsibility away from commanders.

1. **"There were 26,000 sexual assaults in the Department of Defense last year."** This is inaccurate. The Department of Defense's survey used the term "unwanted sexual contacts" to comprise a broad range of improper behavior, ranging from "sexual harassment" to the most violent "sexual assault." This is a serious problem because we need clear definitions and reliable data as a basis for informed legislative action.

2. **"The Allies changed their military justice systems in order to combat sexual assault."** This is inaccurate: Canada and the UK changed their military justice systems to address concerns for the rights of defendants in courts-martial cases. Contrary to assertions, our allies in Israel, Germany, and Australia have made no changes to their military justice systems due to sexual assault or for the specific purpose of benefitting victims of crime.

3. **"The Allies saw an increased number of sexual assault convictions from changing their military justice systems."** This statement is inaccurate: None of our Allies saw increased military sexual assault convictions as a result of changes to their military justice systems. Some have cited Israel's Defense Forces (IDF) in an attempt to prove this inaccurate statement. What the IDF did experience was a statistical anomaly in 2011. The IDF had 28 sexual assault indictments in 2008, 26 in 2009, and 20 in 2010. In 2011 they had 14. In 2012, there were 27. The IDF experience in a very small number of cases is not statistically significant and does not compare to the magnitude and world-wide deployability required of U.S. forces.

4. **"Victims do not report sexual assaults because they fear retaliation."** This is an inaccurate statement. The FY 2012 DOD Annual Report on Sexual Assault in the Military and the Workplace and Gender Relations Survey of Active Duty Members found that 70% of women who experienced unwanted sexual contact did not report simply because they did not want anyone to know. Some may believe that taking disposition authority away from commanders



will mean, for victims, that “no one will ever know” that they reported a sexual assault. Unfortunately, that is not the case under the present system and it will not change if disposition authority is taken from commanders. Once a criminal investigation has begun and witnesses are interviewed people will know. That may be why victims are reluctant to report sexual assault in even the most supportive environment. It takes courage. That is why the services all have sexual assault victim advocates to help victims through the difficult process to bring a case to justice. Commanders have an essential role in ensuring those victims get the help they need.

5. **“Removing Commanders from the process will increase reporting and convictions.”** This is inaccurate: Commanders are consistently willing to prosecute sexual assault offenders, even when military and civilian prosecutors are not. A recent letter from Admiral Winnefeld, Vice Chairman of the Joint Chiefs of Staff reported our commanders have taken 93 cases that civilian prosecutors declined. To date, 73 have resulted in courts-martial with other cases still in process. There were convictions in 52 cases. These commanders deserve our thanks for taking on these challenging cases!

6. **“Sexual assault victims should not be forced to report sexual assaults to their commander, especially if that commander was the perpetrator.”** I actually agree with this statement, but it is very misleading. Throughout our numerous hearings this year on the issue of sexual assault in the military, we heard consistently that no victim has to report a sexual assault to the chain of command. In fact every service testified that they have a wide number of alternative means to report sexual assault including calling 911, notifying civilian or military police, reporting to the military criminal investigative organizations, notifying chaplains, JAGs and medical personnel. They can report in person, on-line, or by text message. In short, there are many ways to make a report and through training and education it is expected that reluctance to report can be reduced so that sexual assault victims can be provided the help they need and deserve.

Finally, I am pleased to report that the Independent Panel to examine sexual assault in the military, created in the FY2013 National Defense Authorization Act, has already begun its very important work. This panel of highly qualified experts will review and report within a year on proposed legislative initiatives to modify the current role of commanders in the administration of military justice and the investigation, prosecution, and adjudication of sexual assault crimes. It is important to get the facts, straight and unbiased, that will provide an objective basis to clearly understand the merits of proposed changes to the Uniform Code of Military Justice. Like many of you, I am looking forward with great interest to studying the Panel’s report as we carefully examine opportunities to strengthen the protections for victims and to ensure fairness for those who are accused of committing crimes.

Sincerely,



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United States Senate